No. 20374

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Appellant

v.

HOWARD C. HAYES, ET AL.,

Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

RESPONSE TO SUPPLEMENTAL BRIEF FOR THE APPELLEES

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Only a brief response to appellees' Supplemental brief is necessary. Appellees urge that the recent decision in United States v. Yazell, 382 U.S. 341, supports their contention that state statutes of limitation may be applied to suits brought by the Government on claims of the Small Business Administration or the Reconstruction Finance Corporation.

This contention is without substance. Indeed on the same day that it decided Yazell, the Supreme Court denied review of a decision of the Court of Appeals for the Second

Circuit, squarely rejecting the identical contention. See United States v. 93 Court Corp., 350 F. 2d 386 (C.A. 2), certiorari denied, 382 U.S. 984. Accord: United States v. Borin, 209 F. 2d 145 (C.A. 5), certiorari denied, 348 U.S. 821.

The reason for the settled doctrine that no statute of limitations may be applied, absent Congressional permission, to suits by the Government, was well stated in Acme Process Equipment Co. v. United States, 347 F. 2d 538, 552 (Ct. Cl.):

> The long succession of cases refusing to apply the statute of limitations against the United States rests on the principle "which forbids that the public interests should be prejudiced by the negligence of the officers or agents to whose care they are confided." United States v. Nashville, Chattanooga & St. Louis Ry., 118 U.S. 120, 125 ....

This principle was not involved in Yazell, which does not deal with the issue at all. And, as the Court of Claims pointed out, the line of cases holding that statutes of limitations may not be applied against the United States is indeed "long," beginning with Mr. Justice (then Circuit Justice) Story's opinion in United States v. Hoar, 2 Mason 311, 26 Fed. Cas. 329, 330 (Cas. No. 15,373) (D. Mass. 1821). See also United States v. John Hancock Mut. Ins. Co., 364 U.S. 301, 308 ("the United States is not subject to local statutes of limitations"); United States v. Summerlin, 310 U.S. 414, 416 (the proposition that "the United States is not bound by state statutes of limitations or subject to the defense of laches in enforcing its rights" is "well settled");

Chesapeake & Del. Canal Co. v. United States, 250 U.S. 123; United States v. Nashville, Chattanooga & St. Louis Ry., 118 U.S. 120; United States v. Thompson, 98 U.S. 486; United States v. Rose, 346 F. 2d 985, 990 (C.A. 3), certiorari denied, U.S. .1/

Obviously, Yazell, which does not discuss the issue, does not alter this unbroken line of authority. Rather, it turns on considerations not present here: (1) that in making the loan involved there, the parties probably took into account the Texas coverture doctrine and (2) that there was a strong state interest in family-property arrangements which Congress would not be presumed to have overridden. In light of the solid line of Supreme Court authority that state statutes of limitations may not be applied to the United States, appellees cannot claim that the guarantee in this case was negotiated with the Alaska statute of limitations in mind. 2/ Neither is there involved here any strong state policy which would justify departure from the long-standing

1/ There have been a number of decisions applying this principle to suits by the United States on claims held by the RFC. See United States v. 93 Court Corp., supra; United States v. Borin, supra; United States v. New York Dock Co., 100 F. Supp. 303 (S.D.N.Y.); RFC v. Marcum, 100 F. Supp. 953 (W.D. Mo.); RFC v. McCarthy Bros., 117 F. Supp. 834 (N.D. Cal.); United States v. Utica Meat Co., 135 F. Supp. 834 (N.D.N.Y.); United States v. Scott, 139 F. Supp. 921 (S.D.N.Y.); United States v. Tambasco, 144 F. Supp. 729 (N.D.N.Y.). Contra, RFC v. Foster Wheeler Co., 70 F. Supp. 420 (S.D. Tex.).

2/ Also without basis is appellees' suggestion that the United States should be subjected to the local statute of limitations because it was "entering the commercial field." (Supp. br. 4). This is well answered in United States v. 93 Court Corp., supra, 350 F. 2d at 389, and needs no further exposition here.

principle that the negligence of government agents cannot prejudice the public interest. When Congress, which surely is aware of the problem, has thought it proper, it has specifically enacted statutory limitations upon Government claims.3/ We respectfully submit that this Court should follow the ruling of the Second Circuit in United States v. 93 Court Corp., supra.

CONCLUSION

The additional defense raised by the appellees is without merit. For the reasons stated in our main brief and reply brief, we respectfully submit that the judgment of the district court should be reversed, with instructions to enter judgment in favor of the United States in the amount of $30,691.67, plus accrued interest.

Respectfully submitted,

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3/ See, e.g., the 5 year statute of limitations upon suits for civil fines and penalties, 28 U.S.C. 2462, and the 6 year statute of limitations on suits under the False Claims Act, 31 U.S.C. 235.

CERTIFICATE

I hereby certify that, in connection with the preparation of this brief, I have examined Rules 18 and 19 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with these rules.

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